

October 31, 2008

Massachusetts Department of Energy Resources
100 Cambridge Street
Boston, MA 02110

TransCanada Power Marketing Ltd.
110 Turnpike Road – Suite 203
Westborough, MA 01581-2863

Thomas Hwang
tel (508) 599-1440
fax (508) 898-0433
e-mail thomas_hwang@transcanada.com

Re: Reply Comments on Section 32 of Chapter 169 of the Acts of 2008, An Act Relative to Green Communities (the “Green Communities Act”) - Amendment of RPS Provisions M.G.L. Chapter 25A, Section 11F (the “RPS Provisions”)

Dear Sir/Madam:

TransCanada Power Marketing Ltd. (“TCPM”) is pleased to submit the following reply comments to the Department of Energy Resources (“Department”) with respect to the amended provisions of G.L. Chapter 25A, Section 11F (the “RPS” or “RPS Provisions”) under the Green Communities Act.

Reply Comments:

1. *Imposing additional environmental standards outside of the 401 water qualification certification (“401 Certificate”) will only delay the RPS qualification process and create administrative redundancies.*

A 401 water qualification certification under the Clean Water Act¹ involves a comprehensive process whereby the interests of federal and state agencies, local watershed users and other local interests are thoroughly vetted and addressed. The goal of the Act is to eliminate and prohibit pollutant discharges into navigable waters and to ensure the protection and propagation of fish, shellfish, and wildlife, as well other beneficial uses of such waters. The Massachusetts Department of Environmental Protection has adopted its own water quality standards regulations that set to achieve the same.²

To impose additional standards on top of the 401 Certificate, as proposed by other commenters, such as the standards used by the Low Impact Hydro Power Institute (a non-profit organization based in Maine) would raise the following concerns:

- (a) It would unduly delay the qualification of hydropower under Class I RPS by January 1, 2009. By imposing additional standards, the Department would have to establish a process to individually assess whether each hydropower satisfies the new standards. This could result in a lengthy review period. Alternatively, if a hydropower source has obtained a 401 Certificate, then the Department can be assured that all appropriate and site specific standards have been addressed by the applicable state environmental agency. This would

¹ 33 USCA §§ 1251–1387 (also known as the Federal Water Pollution Control Act)

² 314 CMR 4.00, Massachusetts Surface Water Quality Standards

enable the Department to meet its objective of ensuring that hydropower renewable energy credits will be available on January 1, 2009.

- (b) It would be contrary to the legislative intent of the Clean Water Act and caselaw.³ It is now settled that the primary responsibility of setting water quality standards is with each state for the navigable waters within their jurisdiction. After all, each state will know what 401 Certificate conditions best address the unique qualities and attributes of their waterways. Imposing additional RPS environmental conditions on hydropower located outside of the Commonwealth of Massachusetts would serve to diminish the 401 Certificate process and standards of other states, potentially resulting in conflicting requirements.
- (c) It would waste the time and effort of the Department. As stated above, the 401 Certificate process already involves a comprehensive proceeding that involves all federal, state and local stakeholders. The time and effort required of the Department to embark on a separate process to address many of the same environmental issues and interests could be better spent on other initiatives in need of more attention.

In short, TCPM again submits that using the 401 Certificate as the basis of determining compliance with the RPS environmental standards provides the Department with a clear and expedient mechanism to qualify the environmental standards of hydropower regardless of location, while at the same time being assured that all appropriate and site specific standards have been addressed by the applicable state environmental agency.

2. *The Renewable Energy Production Tax Credit (PTC)*⁴ *certification by FERC provides a reliable and federally certified percentage of average annual hydropower production attributable to any capacity addition or efficiency improvement*

Under FERC's PTC certification process, the applicant is required to submit its calculation of the historic average annual hydropower production baseline, along with water flow data (the "Baseline Data"). The applicant must also provide its calculations showing the percentage of average annual hydropower production attributable to the capacity addition or efficiency improvement using the Baseline Data. FERC reviews the information and then certifies the calculation, assuming it meets the requirements.

TCPM reiterates that if FERC has certified the percentage increase in generation for a hydropower facility, then such certified percentage should be an acceptable basis of calculating the incremental energy for Class I qualification. Using the FERC PTC certification would avoid having the Department create a new and potentially conflicting incremental energy calculation method, and ensure that the RPS Provisions are implemented and administered in a timely manner. It is also consistent with the methods used in other states in New England (i.e. the Rhode Island renewable energy standards⁵).

³ See *S.D. Warren Co. v. Me. Bd. of Env'tl. Prot.*, 126 S. Ct. 1843 (2006)

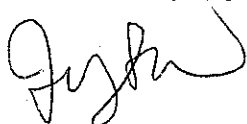
⁴ See attached Renewable Energy Production Tax Credit: Instructions for Requesting Certification of Incremental Hydropower Production Pursuant to the Energy Policy Act of 2005, as updated and posted on FERC's website as of March 2007 (hereinafter, referred to as the "FERC Instructions")

⁵ Sections 3.14, 3.23 (v) and Section 3.23 (vi) of the Rules and Regulations Governing the Implementation of a Renewable Energy Standard (July 25, 2007) promulgated pursuant to Renewable Energy Standards, Section 39-26-1 et. Seq. of the General Laws of Rhode Island

We appreciate this opportunity to comment on the RPS Provisions and hope our comments have been helpful.

Sincerely,

TRANSCANADA POWER MARKETING LTD.

A handwritten signature in black ink, appearing to read 'Thomas Hwang', written over the printed name.

Thomas Hwang
Senior Legal Counsel

cc: Michael E. Hachey, Vice President
Tonya Murphy, Legal Dept.